

## **REMARKS**

The Applicants have now had an opportunity to carefully consider the comments set forth in the Office Action that was mailed November 4, 2008. The decision of the Reviewers to reopen prosecution after Pre-Appeal Brief Review is noted with appreciation.

However, all of the rejections, including the rejections based on the newly cited reference by Bugiu et al., which like previously cited Dahm, is directed toward providing instant promotions and offers (paragraphs 9 and 10) in order to reduce or prevent customer churn (paragraph 4), are respectfully traversed. Amendment, re-examination and reconsideration are respectfully requested.

## **THE OFFICE ACTION**

In the Office Action that was mailed November 4, 2008:

**claims 1, 2, 7, 8, 10, 11, 20, 21, 26, 27, 35, 37 and 38** were rejected under 35 USC §102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0009762 A1 by Bugiu et al. ("Bugiu");

**claims 3, 9, 16, 17, 19, 22, 28 and 36** were rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of U.S. Patent Application Publication No. 2004/0043754 A1 by Whewell ("Whewell");

**claims 4-6, 10-12, 24-25, 29-31 and 39-41** were rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of a pricelist for telephone answering services referred to as Call Center Plus ("CCP");

**claims 13, 32 and 42** were rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of U.S. Patent No. 6,301,471 B1 to Dahm et al. ("Dahm");

**claims 14, 33 and 43** were rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of U.S. Patent No. 7,324,963 B1 to Ruckart ("Ruckart");

**claim 18** was rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of Whewell and Dahm;

**claims 15, 34 and 44** were rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of Dahm and Ruckart;

**claim 45** was rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of CCP and further in view of Dahm;

**claim 46** was rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of CCP and further in view of Ruckart; and

**claim 47** was rejected under 35 USC §103(a) as being unpatentable over a combination of four documents including Bugiu, CCP, Dahm and Ruckart.

### **The Office Action Is Not Completely Responsive**

With regard to the rejections of many of the dependent claims, the Office Action relies on many of the same references as were relied on to justify the rejections presented in the Office Action that was mailed February 6, 2008 without responding to any of the traversals of those rejections, such as those presented in Applicants' Amendment B, which was filed March 18, 2008 or the traversals presented in the Pre-Appeal Brief Request for Review which was filed May 6, 2008. Therefore, the Applicants have been denied an opportunity to better understand the position of the Office and with regard to these claims, no clear issue has been established between the Applicants and the Examiner. Accordingly, the next Office Action should not be made final and should answer the substance of the arguments (MPEP §707.07(f)).

### **The Present Application**

By way of brief review, the present application is related to systems and methods for providing network support for **graduated** airtime billing. That is, adaptations to portions of a mobile communications network are described. Where prior art systems charge a higher rate for airtime in excess of a subscriber's calling plan limits, the subject matter of the present application provides means for charging progressively lower rates for airtime in excess of a subscriber's calling plan limits. Moreover, the present application provides means for rewarding customer loyalty by providing increased discounts based on a time period the subscriber has been a customer, and/or provides means for encouraging calling plan upgrading by considering the cost of the base calling plan subscribed to by the subscriber and providing increased discounts for airtime consumed in excess of the allocation in higher cost plans (e.g., **original claims 13-15, 17-18, 32-34, 41-46**).

### **The Newly Cited Document**

In stark contrast, the newly cited primary reference of the Office Action to **Bugiu**, very much like the previously cited patent to Dahm, discloses a method and system for selecting one or more customer accounts for offering an incentive to a corresponding account holder (Abstract, lines 4-6). Like Dahm, Bugiu is directed toward selecting customers to receive promotions (paragraph 9) and identifying customers that the provider is most at risk of losing and then offering them (e.g., in real time) promotions that are designed to create the right perception of price with the customer (paragraph 10). Like Dahm, the problem allegedly addressed by **Bugiu** is preventing customer **churn** (paragraph 6, paragraph 4).

The Office Action alleges that Bugiu discloses the method recited in **claim 1** and repeatedly cites paragraphs 40 and 32 and makes additional citations to paragraph 43 and 53 in support of this assertion. However, Bugiu does not disclose or suggest the method for charging a subscriber for airtime recited in **claim 1**.

It is respectfully submitted that the arguments of the Office take paragraphs of **Bugiu** out of context and reassemble them **based on impermissible hindsight reasoning** in an effort to support its assertions. In this regard, it is respectfully submitted that MPEP §2131 makes it clear that to anticipate a claim, the reference must teach every element of the claim and that the elements must be arranged as required by the claim, and that Bugiu does not meet this requirement with regard to the present application. For example, with regard to the recitation in **claim 1** of determining a first reference billing rate for a first category of airtime, the Office Action cites paragraph 40 “where Bugiu discusses promotion of a percentage off a specific rate, and the specific rate is the first reference billing rate”. However, while paragraph 40 mentions a discount, Bugiu does not disclose or suggest a method involving determining a first reference billing rate for a first category of airtime as is recited in **claim 1**.

With regard to the recitation in **claim 1** of charging the first discounted billing rate for at least some first category airtime consumed by the subscriber in excess of the first threshold airtime amount, the Office Action cites paragraphs 40, 43 and 53 without any explanation. Paragraph 40 indicates that a promotion for embodiments of the invention of Bugiu may be any incentive, discount or advantage applied to a customer account for the account holder. However, paragraph 40 does not disclose or suggest charging a first discounted billing rate for at least some first category airtime consumed by the subscriber in excess of a first threshold airtime amount.

Paragraph 43 indicates that CDR information may include length of calls, cost of the call, minimum call duration, base service (e.g., voice, fax, data), service identifier, call destinations (e.g., within the network, outside the network), geographic location, time of day of calls, average duration of calls, calling party number, date of call, start and end time of call (and/or duration of call), call number and the like.

However, paragraph 43 **does not disclose or suggest** charging a first discounted billing rate for at least some first category airtime consumed by the subscriber in excess of the first threshold airtime amount.

Paragraph 53 indicates that since not all billing systems of telecom providers calculate **free minutes** on a call-by-call basis, some embodiments of the invention of Bugiu may be configured to handle **free** call allocation by period (e.g., monthly, quarterly) and pass a credit for the eligible calls before the bill is generated.

However, paragraph 53 does not disclose or suggest charging a first discounted billing rate for at least some first category airtime consumed by the subscriber in excess of the first threshold airtime amount. For at least the foregoing reasons, **claims 1-47** are not anticipated and are not obvious in light of Bugiu taken alone or in combination with the other cited documents.

### **The Previously Cite Documents**

Whewell allegedly discusses a variable billing plan which calculates the lowest possible invoice amount to be billed to a customer of cellular services from a variety of billing options.

However, the method of Whewell discourages subscribers from subscribing to any but the lowest cost service plan. Accordingly, ones of ordinary skill in the art would not look to Whewell. Additionally, Whewell is silent with regard to categories of airtime. Accordingly, even if Whewell could be construed as disclosing charging a flat fee for a first category of airtime consumed by the subscriber up to the first threshold airtime amount as recited in **claim 3** (which is disputed), Whewell **does not** disclose or suggest charging a flat fee for a second category of airtime consumed by the subscriber up to a second category first threshold airtime amount as recited in **claim 9**. Whewell does not disclose or suggest applying the one or more discounted billing strategies to portions of the one or more airtime amounts that are in excess of the calling plan limits to determine discounted surcharges as recited in **claim 16**. Furthermore, Whewell provides no disclosure of a system and includes

no figures. Accordingly, Whewell does not disclose any means for charging a flat fee for a first category of airtime as recited in **claim 22** or any means for charging for second category airtime as recited in **claim 28**. Moreover, Whewell cannot disclose or suggest a means for charging disclosed in the present application and recited by reference thereto under 35 USC §112, sixth paragraph, in **claims 22** and **28**. Still further, since Whewell does not disclose or suggest any system components, Whewell cannot disclose or suggest a graduated biller recited in **claim 36**.

Call Center Plus (CCP) is a pricelist for answering service services.

Dahm, like the newly cited reference to Bugiu, allegedly discloses a system and method that allows mobile subscribers who have been identified as being likely candidates for churning, to efficiently, visually and interactively, review an offer for a mobile service plan better meeting the subscriber's needs (Abstract).

Ruckart allegedly discloses methods and systems for offering bundled goods and services (title). The Office Action asserts that the Abstract and three lines from column 3 of Ruckart discloses a method and apparatus for providing discounted billing rates to customers for wireless telephone service. However, the Abstract is silent with regard to wireless telephone service. Instead, the Abstract of Ruckart indicates that customers can select a combination of goods and services offered by a vendor, rather than choosing from among a few, bundled packages.

The cited portion of column 3 indicates that --goods, services or the combination of goods and services are herein referred to as products. Such products may include telephones, wireless communication devices, local telephone services, long distance telephone services, wireless telephone services, paging services and internet services--.

### **The Claims Are Not Anticipated**

**Claims 1, 2, 7, 8, 10, 11, 20, 21, 26, 27, 35, 37** and **38** were rejected under 35 USC §102(e) as being anticipated by Bugiu.

With regard to **claims 1** and **20**, the Office Action cites the Abstract, paragraph 31, 32, 40, 43 and 53 of Bugiu.

However, Bugiu is directed toward a system and method to create and implement new pricing plans, discounts and/or incentives and communicate such offers immediately to customers (paragraph 7) and **does not disclose or suggest**

a method or system for charging a subscriber for airtime such as those recited in claims 1 and 20 of the present application.

For example, even if paragraphs 40 and 32 discuss promotion of a percentage off a specific rate, that does not disclose or suggest a method for charging a subscriber for airtime that involves determining a first reference billing rate for a first category of airtime, and determining a first threshold airtime amount for the first category of airtime, and determining a quantity of first category airtime consumed by the subscriber and determining a first discounted billing rate for the first category of airtime that is less than the first reference rate based on a function that at least one of rewards customer loyalty and encourages subscription to higher cost subscription plans and charging the first discounted billing rate for at least some of first category airtime consumed by the subscriber in excess of the first threshold airtime amount. It is respectfully submitted that a discussion of call duration that might be included in paragraph 40 does not disclose or suggest a method for billing for airtime that includes determining a first threshold airtime amount for a first category of airtime. It is respectfully submitted that **only hindsight reasoning based on information gleaned only from the present application** could cause one to construe a discussion of call duration as having anything to do with a threshold airtime amount for a first category of airtime as is alleged by the Office Action. A call is not a category of airtime, such as daytime, nights and weekends, etc.

Even if, as asserted by the Office Action, paragraph 40 of Bugiu discusses a loyalty program, that does not disclose or suggest a method of charging a subscriber for airtime that includes determining a first discounted billing rate for the first category of airtime that is less than the first reference rate based on a function that at least one of rewards customer loyalty and encourages subscription to a higher cost subscription plan.

Nothing in the combination of the discussion of a promotion in paragraph 40, the content of call data records in paragraph 43 and the indication in paragraph 53 that since not all billing systems of telecom providers calculate free minutes on a call-by-call basis, some embodiments of the system of Bugiu may be configured to handle free call allocation by period discloses or suggests charging a first discounted billing rate for at least some first category airtime consumed by a subscriber in

excess of a first threshold airtime amount as recited in **claim 1** or means therefor as recited in **claim 20**.

With regard to **claim 20**, the Office Action simply asserts that Bugiu discloses means for performing the method of **claim 1** and cites paragraph 31. However, paragraph 31 discusses a block diagram of a system of Bugiu but does not disclose or suggest a system for charging a subscriber for airtime comprising means for determining a first reference billing rate for a first category of airtime, means for determining a first threshold airtime amount, means for determining a quantity of first category airtime consumed by the subscriber, means for determining a first discounted billing rate for the first category of airtime that is **less than a first reference rate** wherein the first discounted billing rate is **based on a function** that at least one of rewards customer loyalty and encourages subscription to a higher cost subscription plan and means for charging the first discounted billing rate for at least some of first category airtime consumed by the subscriber in excess of the first threshold airtime amount, as is recited in **claim 20**. Moreover, even if Bugiu could be construed as disclosing **some** means for performing these functions, it is respectfully submitted that Bugiu does not disclose the same means as is disclosed in the present application. Clarification of the assertions of the Office Action with regard to paragraph 31 are respectfully requested.

For at least the foregoing reasons, **claim 1**, as well as **claims 2-15** and **claim 20**, as well as **claims 21-34**, which depend therefrom, are not anticipated and are not obvious in light of Bugiu.

With regard to **claim 35**, the Office Action asserts that Bugiu discloses a system operative to charge a progressively lower rate for airtime consumed by a subscriber during a billing period and cites the Abstract and paragraphs 40 and 53 without comment in support of this assertion. However, Bugiu is silent with regard to charging a **progressively** lower rate for airtime consumed by a subscriber during a billing period. Clarification of the assertion of the Office Action in this regard is respectfully requested.

With regard to the recitation of a call record reviewer in **claim 35**, the Office Action cites paragraphs 31 and 32 of Bugiu and makes reference to the discussion of CDRs and a postpaid billing system found in those paragraphs. However, the mere mention of CDRs and a postpaid billing system does not disclose or suggest a call record reviewer operable to determine one or more total quantities of airtime

consumed in one or more airtime categories during a billing period. It is respectfully submitted that the Office is interpreting the cited paragraphs based on hindsight reasoning.

For at least the foregoing additional reasons, **claim 35**, as well as **claims 36-47**, which depend therefrom, is not anticipated by Bugiu.

With regard to the graduated biller recited in **claim 35**, the Office Action cites paragraphs 31 and 40 without comment.

However, while paragraph 31 mentions a postpaid billing system and call detail records and while paragraph 40 indicates that a promotion for embodiments of the invention of Bugiu may be “any incentive, discount or advantage applied to a customer account for the account holder”, and that “a promotion may include a percentage off a specific rate for a portion (or all) of the duration of a call, a reduced amount for calls over a certain duration, cash back, loyalty program, merchandise and the like”, it is respectfully submitted that none of this discloses or suggests a graduated biller operative to apply one or more charges for portions of one or more total quantities of airtime that are below one or more threshold quantities and to apply at least one discounted billing rate to one or more portions of the one or more total quantities of airtime that are above the one or more threshold quantities of airtime, wherein the at least one discounted billing rate is determined from a function that at least one of rewards customer loyalty and encourages subscription to higher cost subscription plans, as recited in claim 35. Clarification of the position of the Office is respectfully requested.

For at least the foregoing additional reasons, **claim 35**, as well as **claims 36-47**, which depend therefrom, is not anticipated by Bugiu.

With regard to **claims 2, 21, 37 and 38**, the Office Action makes reference to paragraphs 40 and 53, without comment.

However, it is respectfully submitted that paragraphs 40 and 53, alone or in combination, do not disclose or suggest charging a first reference rate for an amount of first category airtime consumed by a subscriber up to a first threshold airtime amount, as recited in **claim 2** or means therefor as recited in **claim 21**. It is respectfully submitted that **paragraphs 40 and 53 do not mention a first category of airtime**. It is respectfully submitted that **paragraphs 40 and 53 do not mention a first threshold airtime amount**. Accordingly, even if the cited paragraphs mention some rate and some discount, the cited paragraphs do not disclose or



suggest charging the first reference rate for an amount of first category airtime consumed by the subscriber up to the first threshold airtime amount as recited in **claim 2**, or means therefor as recited in **claim 21**.

Additionally, it is respectfully submitted that the cited paragraphs do not disclose or suggest the system of **claim 35** wherein the graduated biller is operative to apply a charge based on one or more reference billing rates for portions of the one or more total quantities of airtime that are below one or more calling plan limits, as recited in **claim 37**.

Still further, it is respectfully submitted that paragraphs 40 and 53 do not disclose or suggest the system of **claim 35** wherein the graduated biller is operative to apply at least one discounted billing rate, relative to at least one reference billing rate associated with portions of one or more total quantities of airtime that are below one or more calling plan limits to portions of the one or more total quantities of airtime that are above one or more calling plan limits. It is respectfully submitted that even if paragraph 40 mentions discounts generally and paragraph 53 mentions handling free call allocation by period (e.g., monthly, quarterly), this **does not disclose or suggest a reference rate** associated with total quantities of airtime below calling plan limits and a discounted billing rate applied to portions of one or more total quantities of airtime that are above one or more calling plan limits. It is respectfully submitted that **only hindsight reasoning** would cause one to interpret the cited paragraphs in this manner.

For at least the foregoing additional reasons, **claims 2, 21, 37 and 38** are not anticipated by Bugiu.

With regard to **claims 7, 8, 10, 11, 26 and 27**, the Office Action provides an improper omnibus rejection, makes reference to the rejections of **claims 1 and 2**, further asserts that Bugiu discloses a second category of airtime, makes reference to paragraph 41 and characterizes it as discussing different criteria providing incentive billing.

However, paragraph 41 of Bugiu indicates that "The selection of customers, which may be referred to "segmentation" in the present invention, refers to specifying a group of customers to receive one or more promotions. Such segmentation may be made dynamically and preferably uses the most up-to-date information obtained from the telecom provider (or website). The criteria used to select customers (i.e., a market segment/niche) may include any imaginable criteria to pinpoint a select group

including name, address, birth date, usage patterns, eye color, hair color, weight, height, profession, age, employer, address, work address, favorite color, favorite number, phone number, home phone number, mother's maiden name, schools attended, and the like."

It is respectfully submitted that nothing in paragraph 41 discloses or suggests a second category of airtime. Moreover, paragraph 41 even in combination with the citations and assertions associated with the rejections of **claims 1 and 2** does not disclose or suggest determining a second reference billing rate for a second category of airtime, determining a second category first threshold airtime amount, determining a quantity of second category airtime consumed by the subscriber, determining a second category first discounted billing rate for the second category of airtime less than the second reference rate and charging the second category first discounted billing rate for at least some second category airtime consumed by the subscriber in excess of the second category first threshold airtime amount, as recited in **claim 8**.

Furthermore, **paragraph 41 does not disclose or suggest** charging the second reference rate for second category airtime consumed by the subscriber up to the second category first threshold airtime amount as recited in **claim 8**.

Moreover, paragraph 41, even in combination with the citations and assertions made with regard to **claims 1 and 2**, does not disclose or suggest determining a second category second threshold airtime amount greater than the second category first threshold airtime amount, determining a second category second discounted billing rate for the second category of airtime that is less than the second category first discounted rate, and charging the second category second discounted billing rate for at least some second category airtime consumed by the subscriber in excess of the second category second threshold airtime amount, as is recited in **claim 10**.

Still furthermore, paragraph 41, even in combination with the citations and assertions made with regard to **claims 1 and 2** does not disclose or suggest determining a second category third threshold airtime amount, greater than the second category second threshold airtime amount, determining a second category third discounted billing rate for the second category of airtime that is less than the second category second discounted billing rate and charging the second category third discounted billing rate for at least some second category airtime consumed by

the subscriber in excess of the second category third threshold airtime amount, as recited in **claim 11**. Clarification of the assertions of the Office Action in this regard are respectfully requested.

**Claims 26 and 27** recite means for performing the elements of **claims 7 and 8**, respectively. Accordingly, arguments similar to those submitted in support of **claims 7 and 8** are submitted in support of **claims 26 and 27**.

For at least the foregoing additional reasons, **claims 7, 8, 10, 11, 26 and 27 are not anticipated** by Bugiu.

### **The Claims Are Not Obvious**

**Claims 3, 9, 16, 17, 19, 22, 28 and 36** were rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of Whewell.

However, Whewell discloses a method for calculating an invoice amount for a consumer of cellular telephone services that calculates an invoice amount based upon an accepted billing schedule choice of the consumer, calculates a hypothetical invoice amount based upon a billing plan that was offered to the consumer but which was not selected by the consumer and repeating the hypothetical calculation for each of all of the plans offered but not selected, so as to provide a hypothetical invoice amount for each plan not selected and issuing an invoice to the customer using the least dollar value as a pretax basis for the invoice (paragraph 3, steps D-H). Accordingly, **Whewell teaches away from encouraging subscription to higher cost subscription plans**, as is recited in **claim 1** of the present application, by removing all incentive for subscribing to a higher cost subscription plan.

Therefore, **one of ordinary skill in the art** looking to address the problems addressed by the subject matter of the present application **would not look to Whewell**. Accordingly, there is no motivation in the art for combining Bugiu and Whewell, and **claims 3, 9, 16, 17, 19, 22, 28 and 36** are not anticipated and are not obvious in view of Bugiu and Whewell.

Additionally, the motivation for making the combination alleged by the Office Action "to provide the subscriber with a reference airtime included with a subscription plan" is specious. There is no motivation in the art to --provide a subscriber with a reference airtime--. Accordingly, **the Office has not met its burden** of presenting a *prima facie* case of obviousness, and again, **claims 3, 9, 16, 17, 19, 22, 28 and 36** are not anticipated and are not obvious in light of Bugiu and Whewell.

With regard to **claim 16**, toward the bottom of page 5 of the Detailed Office Action, the Office Action cites paragraphs 40 and 55 for disclosure of applying one or more reference billing rates for respective portions of the one or more airtime amounts that are within the one or more calling plan limits to determine basic charges, applying the one or more discounted billing strategies to portions of the one or more airtime amounts that are in excess of the calling plan limits, applying one or more discounted billing strategies to portions of the one or more airtime amounts that are in excess of the calling plan limits to determine discounted surcharges and combining the basic charges and the discounted surcharges to determine a total charge for the subscriber for the billing period.

However, paragraph 40 of Bugiu discusses a promotion for embodiments of the invention of Bugiu and **does not disclose or suggest** applying one or more discounted billing strategies to portions of the one or more airtime amounts that are **in excess of calling plan limits** to determine discounted surcharges.

Paragraph 55 indicates that credit information for customers for a promotion may be forwarded from a DPS to a postpaid billing system so that it may be matched up to CVRs from the particular customer being provided the discount and applied to the customer account to generate an invoice at the end of the billing cycle. Credits may also be configured into a loyalty program, where the provider may have the choice of applying minutes to the customer account, or providing vouchers as a reward to be applied to future account balances, cash rewards, or merchandise purchases, for example.

It is respectfully submitted that paragraphs 40 and 55 **do not disclose or suggest** calling plan limits or applying discounted billing strategies to portions of the one or more airtime amounts (as recited in **claim 16**) that are in excess of the calling plan limits to determine discounted surcharges. Accordingly, paragraphs 40 and 55 **do not disclose or suggest** combining the basic charges and the discounted surcharges to determine a total charge for the subscriber for the billing period. It is respectfully submitted that **only impermissible hindsight reasoning** based on information gleaned only from the present application would cause one to construe paragraphs 40 and 55 as disclosing or suggesting applying one or more of the one or more reference billing rates for respective portions of the one or more airtime amounts that are within the one or more calling plan limit to determine a basic charge and applying the one or more discounted billing strategies to portions of the

one or more airtime amounts that are in excess of the calling plan limits to determine discounted charges.

For at least the foregoing additional reason, **claim 16** is not anticipated and is not obvious in light of Bugiu and Whewell.

With regard to **claim 17**, the Office Action cites paragraph 40 of Bugiu without any further comment.

However, it is respectfully submitted that paragraph 40 **does not mention** an airtime consumption threshold. Paragraph 40 **does not mention** airtime categories. Paragraph 40 **does not disclose or suggest** calculating one or more discounted billing rate associated with one or more airtime consumption threshold. Paragraph 40 **does not mention a function** of an amount of airtime consumed in one or more airtime categories, and paragraph 40 **does not mention a function** selected to generate larger discounts for at least one of longer customer time periods, higher cost subscription plans and the amount of airtime consumed in the one or more airtime categories. That is, paragraph 40 does not disclose or suggest increasing discount rates with increased airtime consumption. Clarification of the assertions of the Office Action is respectfully requested.

Since paragraph 40 does not disclose or suggest selecting one or more airtime consumption thresholds for each of the one or more airtime categories and calculating one or more discounted billing rate associated with the one or more airtime consumption thresholds based on a function of at least one of a time period the subscriber has been a customer, a calling plan subscription cost of the subscriber and an amount of airtime consumed in the one or more airtime categories during a period of interest, the function selected to generate larger discounts for at least one of longer customer time periods, higher cost subscription plans and the amount of airtime consumed in the one or more airtime categories, as recited in **claim 17**, **claim 17** is not anticipated and is not obvious in light of Bugiu and Whewell.

**Claim 19** depends from **claim 16** and is not anticipated and is not obvious for at least that reason.

**Claims 4-6, 10-12, 24-25, 29-31 and 31-41** were rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of the answering service pricelist referred to as CCP.

With regard to all of these claims, the Office Action asserts that Bugiu discloses providing incentive billing for usage of airtime over a predetermined period. **However, the Office Action provides no support for this assertion.** It is respectfully submitted that Bugiu does not disclose or suggest providing incentive billing for usage of airtime over a predetermined period. **Furthermore, none of the subject claims recite providing incentive billing for usage of airtime** over a predetermined period. For example, **claim 4** recites determining a second threshold airtime amount greater than the first threshold airtime amount; determining a second discounted billing rate for the first category of airtime that is less than the first discounted rate and charging the second discounted billing rate for at least some first category airtime consumed by the subscriber in excess of the second threshold airtime amount.

Moreover, there is no motivation in the art to combine the answering service pricesheet of CCP with Bugiu. Still further, it is respectfully submitted that **the motivation suggested by the Office Action** “to encourage subscribers to utilize services during low activity periods” **is something allegedly achieved by Bugiu alone** (see paragraph 12). Accordingly, there is no motivation in the art other than hindsight reasoning based on information gleaned only from the present application, to combine the answering service pricelist of CCP with Bugiu. Further in this regard, it is noted that CCP is completely unrelated to low activity periods.

For at least the foregoing additional reasons, **claims 4-6, 10-12, 24-25, 29-31 and 39-41** are not anticipated and are not obvious in light of Bugiu and CCP. Additionally, **claim 10** recites *inter alia*: determining a second category second threshold airtime amount greater than the second category first threshold airtime amount. **Claim 11** recites *inter alia*: determining a second category third threshold airtime amount and **claim 12** recites *inter alia*: determining a second category fourth threshold airtime amount. It is respectfully submitted that Bugiu, even in combination with CCP, does not disclose or suggest second, third or fourth categories of airtime. Accordingly, Bugiu and CCP cannot disclose or suggest the subject matter of **claims 10, 11 and 12**.

Still further, CCP does not disclose or suggest a fourth threshold, even of answering service time. Accordingly, CCP does not disclose or suggest determining a second category fourth threshold **airtime** amount, as recited in **claim 12**.

For at least the foregoing additional reasons, **claims 10, 11 and 12** are not anticipated and are not obvious in light of Bugiu and CCP.

Arguments similar to those submitted in support of **claims 10-12** are submitted in support of **claims 29-31**. Bugiu and CCP do not disclose or suggest a second category of airtime. Moreover, Bugiu and CCP do not disclose or suggest second, third or fourth threshold airtime amounts of a second category of airtime. Accordingly, Bugiu and CCP do not disclose or suggest the means for determining second category second, third and fourth threshold airtime amounts recited in **claims 29, 30 and 31**, respectively, or the means for determining second category second, third or fourth discounted billing rates or the means for charging said rates recited in **claims 29, 30 and 31**, respectively.

Moreover, CCP cannot even be construed as disclosing or suggesting a fourth threshold of answering service time. Accordingly, CCP cannot be construed as disclosing or suggesting a fourth threshold airtime amount.

For at least the foregoing additional reasons, **claims 29-31** are not anticipated and are not obvious in light of Bugiu and CCP.

**Claims 39-41** depend from **claim 35** and are not anticipated and are not obvious for at least that reason. Additionally, arguments similar to those submitted above with regard to **claims 4-6** are submitted in support of **claims 39-41**. Moreover, **claim 41** recites the system of **claim 35** wherein the graduated biller is operative to apply a continuously increasing discounted billing rate to a portion of a total quantity of consumed airtime in a first airtime category above a first airtime category threshold (e.g., see Fig. 2, reference numerals 322 and 326 of the present application and/or Fig. 3). It is respectfully submitted that, most clearly, Bugiu and CCP do not disclose or suggest the graduated biller recited in **claim 41**.

For at least the foregoing additional reasons, **claims 39-41** are not anticipated and are not obvious in light of Bugiu and CCP.

**Claims 13, 32 and 42** were rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of Dahm.

With regard to **claims 13, 32 and 42**, the Office Action asserts that Bugiu further discloses determining discounted billing rate as a function of loyalty. However, **the Office Action provides no support for this assertion**. Furthermore, Bugiu does not disclose or suggest determining a discounted billing rate as a function of loyalty. Both Bugiu and Dahm are concerned with churn. They identify

customers that are likely to churn or leave to use a different service and present them with offers in order to encourage loyalty. However, **they do not disclose or suggest** determining a discounted billing rate as a function of loyalty (i.e., the length of time a customer **has been** a customer).

For at least the foregoing reasons, **claims 13, 32 and 42** are not anticipated and are not obvious in light of Bugiu and Dahm.

Further in this regard, in the same sentence, the Office Action stipulates that Bugiu **does not disclose** determining a time period the subscriber has been a customer and determining the first discounted billing rate based on a function of the time period the subscriber has been a customer that generates a larger discount for longer customer time periods. In this regard, the Office Action attempts to splice together portions of columns 2, 11 and 1 of Dahm.

However, Dahm is related to **presenting offers** to customers who are likely to churn. Dahm does not disclose or suggest the subject matter of **claims 13, 32 and 42**. Even if the cited portions of columns 11 and 12 discuss offering better rates in exchange for longer term commitments, that does not disclose or suggest determining how long a customer **has been** a subscriber and determining a first discounted billing rate based on a function of the time period the subscriber **has been** a customer. Even if the cited portion of column 1 of Dahm indicates that customer churning increases with each passing month, that **does not disclose or suggest** determining a time period the subscriber has been a customer and determining a first discounted billing rate based on a function of the time period the subscriber **has been a customer**. Dahm simply makes offers to customers deemed likely to churn.

For at least the foregoing reasons, **claims 13, 32 and 42** are not anticipated and are not obvious in light of Bugiu and Dahm.

**Claims 14, 33 and 43** were rejected under 35 USC §103 as being unpatentable over Bugiu in view of Ruckart.

With regard to **claims 14, 33 and 43**, the Office Action asserts that Bugiu discloses rewarding customers for money spent on service. However, the Office Action provides no citation to support this assertion. A clear citation to a portion of Bugiu that discloses rewarding customers for money spent on service is respectfully requested.



Furthermore, **claims 14, 33 and 43** do not recite rewarding customers for money spent on service. For example, **claim 14** recites determining a calling plan subscription cost of a subscriber and determining a first discounted billing rate based on a function of the calling plan's subscription cost of the subscriber that generates larger discounts for higher cost **subscription plans**.

For at least the foregoing additional reasons, **claims 14, 33 and 43** are not anticipated and are not obvious in light of Bugiu in light of Ruckart.

In accord with the assertions of the Applicant made above, the Office Action goes on to **stipulate** that Bugiu **does not disclose** determining a discounted billing rate based on calling plan subscription cost and relies on Ruckart for this disclosure.

However, Ruckart discloses increasing discounts with the bundling of **more items**. The cited Abstract is silent with regard to wireless telephone services. Lines 33-36 of column 3, cited by the Office Action, indicate that the goods or services discussed by Ruckart may include telephones, wireless communication devices, local telephone services, long distance telephone services, wireless telephone services, paging services, and internet services. Cited lines 51-56 of column 3 (which is assumed to be the column cited) indicate that a webpage can display a base price for each product along with a message indicating that **any combination of products is available** to the customer. Also incorporated into this message is the indication that, if more than one product is selected, a varying progressive discount from the base prices will be applied to the selections. Further, the message indicates that the discount will be greater if more expensive products are selected.

None of this discloses or suggests a method of charging a customer **for airtime** that involves determining a first discounted billing rate for a **first category of airtime** that is less than a first reference rate based on a function that at least one of **rewards** customer loyalty and encourages subscription to higher cost **subscription plans** wherein that determination of a first discounted billing rate for the first category of airtime includes determining a calling plan subscription cost of the subscriber (i.e., that is determining a calling plan subscription cost that the subscriber already subscribes to) and determining a first discounted billing rate based on a function of that calling plan subscription cost that generates larger discounts for higher cost **subscription plans**.

That is, it is respectfully submitted that disclosure of offering discounts in order to encourage bundling, even in combination with disclosure of offering better

rates if a customer will commit to longer term contracts, does not disclose or suggest determining a cost of a subscription that a subscriber currently has and determining a first discounted billing rate based on a function of a calling plan subscription cost **without requiring bundling** as is recited in, for example, **claim 14**. Furthermore, the discounts of Ruckart related to cellular service are applied to the **base plan cost** and **not to airtime**.

For at least the foregoing additional reasons, **claims 14, 33 and 43** are not anticipated and are not obvious in view of Bugiu and Ruckart.

Additionally, it is respectfully submitted there's no motivation in the art to combine Bugiu with Ruckart. The assertion of the Office Action that it would have been obvious "to modify Bugiu with Ruckart to determine a discounted billing rate based on the price of a product is selected in order to provide a variable pricing structure that rewards customers for choosing a greater number of goods and services" is unintelligible. Accordingly, **the Office has not met its burden** of presenting a *prima facie* case of obviousness.

**Claim 18** was rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of Whewell and Dahm.

In this regard, arguments similar to those submitted above with regard to **claims 16 and claims 13, 32 and 42** are submitted in support of **claim 18**. The assertion of the Office Action that Bugiu discloses determining a discount billing rate as a function of loyalty is not supported by a citation to some portion of Bugiu. Furthermore, Bugiu does not disclose or suggest determining a discounted billing rate is a function of loyalty. Further in this regard, the Office Action stipulates that Bugiu does not disclose determining a time period the subscriber has been a customer and determining the first discounted billing rate based on a function of the time period the subscriber has been a customer that generates a larger discount for longer customer time periods. In this regard, the Office Action again relies on Dahm. However, for the reasons given above with regard to **claims 13, 32 and 42**, the cited portions of columns 2, 11, 12 and 1 do not disclose the subject matter of **claim 18**.

For at least the foregoing additional reasons, **claim 18** is not anticipated and is not obvious in light of Bugiu, Whewell and Dahm.

**Claims 15, 34 and 44** were rejected under 35 USC §103(a) as being unpatentable over Bugiu, in view of Dahm and further in view of Ruckart.

With regard to all three claims, the Office Action again asserts that Bugiu discloses determining a discounted billing rate as a function of loyalty. However, while **Bugiu mentions the word** --loyalty--, Bugiu **does not disclose or suggest** a discounted billing rate as a function of loyalty. Bugiu **does not discuss a measure of loyalty** or include it as an **input to a function of loyalty** (e.g., see paragraphs 61-62 of the present application).

Additionally, the Office Action **stipulates** that Bugiu **does not disclose or suggest determining** a time period the subscriber **has been** a customer and determining a first discounted billing rate based on a function of the time period the subscriber **has been** a customer.

In this regard, the Office Action dissects the subject matter of **claims 15, 34 and 44** and alleges disclosure of the dissected portions. For example, **claim 15** recites *inter alia*: determining a time period the subscriber has been a customer, determining a calling plan subscription cost of the subscriber, and determining the first discounted billing rate based on a function of the time period the subscriber has been a customer and of the calling plan subscription cost of the subscriber that generates larger discounts for longer customer time periods and higher cost subscription plans.

In this regard, the Office Action cites first Dahm for disclosure of determining a first discounted billing rate based on a function of the time period the subscriber **has been** a customer and relies on Ruckart for disclosure of determining a first discounted billing rate based on a function of the calling plan subscription cost.

However, even as asserted in the Office Action, Dahm discloses **offering** better rates in exchange for longer term commitments. In other words, Dahm offers a discount if the customer will agree to be a customer in the future. Accordingly, Dahm **does not disclose or suggest** determining a time period the subscriber **has been** a customer.

Furthermore, even as described by the Office Action, Ruckart discloses providing a greater discount if more expensive products are selected. It is respectfully submitted that this does not disclose or suggest a greater discount for airtime consumed above a calling plan limit wherein the discount is greater if the calling plan in question is a higher cost subscription plan. Moreover, Bugiu, Dahm and Ruckart do not disclose or suggest determining a first discounted billing rate based on a function of both a time period the subscriber has been a customer and

the cost of a subscription plan wherein larger discounts are provided for longer customer time periods and higher cost subscription plans (e.g., see paragraphs 61-62 of the present application).

Additionally, the Office Action **has not met its burden** of presenting **a prima facie case of obviousness**. For example, the Office Action does not even offer a suggested motivation for combining all three documents. **Instead**, it only offers the specious assertions that it would have been obvious to combine Bugiu with Rukart and separately it would have been obvious to combine Bugiu with Ruckart.

For at least the foregoing additional reasons, **claims 15, 34 and 44** are not anticipated and are not obvious in light of Bugiu, Dahm and Ruckart.

**Claim 45** was rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of CCP and Dahm.

However, this rejection overlooks language in **claim 45**. For example, **claim 45** recites *inter alia*: the system of claim 41 wherein the continuously increasing discount is a function of the time period the subscriber has been a subscriber that generates a larger discount for longer customer time periods and the amount of airtime consumed in a first airtime category.

For a discussion of continuously increasing discount, the attention of the Examiner is directed toward, for example, Fig. 2 and Fig. 3 of the present application and, for example, paragraph 65.

As indicated above, even **the Office Action does not assert** that Bugiu, CCP and Dahm disclose or suggest a continuously increasing discount.

Furthermore, as indicated above, the assertions made in the Office Action with regard to what Bugiu, Dahm and CCP disclose are respectfully traversed. Bugiu **does not disclose determining discounted billing rate as a function of loyalty**. While Dahm may disclose offering better rates in exchange for longer term commitments to customers that are likely to churn, that does not disclose or suggest the subject matter of **claim 41**, which **does not recite** making offers or requiring longer commitments in the future.

Additionally, the Office has not met its burden of presenting a prima facie case of obviousness. Bugiu addresses the issue of customer churn on its own (e.g., see paragraphs 4 and 6). Dahm issued in October of 2001. Bugiu was filed in May of 2003. Accordingly, if it were obvious to incorporate items of Dahm into the system of Bugiu "so that a service provider can retain existing subscribers and

increase profit by retaining subscribers” as asserted by the Office Action, then Bugiu would have done so. Accordingly, there is no motivation for combining Bugiu, CCP and Dahm other than **impermissible hindsight reasoning**, and again, **claim 45** is not anticipated and is not obvious in light of Bugiu, CCP and Dahm.

**Claim 46** was rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of CCP and Ruckart. With regard to **claim 46**, the Office Action makes the vague assertion that Bugiu “further discloses rewarding customers for money spend on service”. However, **claim 46** does not recite --rewarding customers for money spent on service--. Instead, **claim 46** recites “the system of claim 41 wherein the continuously increasing discounted billing rate is a function of the calling plan subscription cost of the subscriber that generates a larger discount for higher cost subscription plans and larger amounts of airtime consumed in a first airtime category.

Additionally, the Office Action **stipulates** that Bugiu does not disclose determining a discounted billing rate based on calling plan subscription costs and relies on Ruckart for this disclosure.

However, the assertion of the Office Action that Ruckart “discloses a method and apparatus for providing discounted billing rates customers for wireless telephone services” and cites the Abstract and column 3, lines 33-36, in support of the assertion.

However, the Abstract of Ruckart discusses a method and system implementing a variable pricing structure that applies to goods and services available from a vendor wherein a progressive discount is employed in the determination of the price of the combination such that increasing the number of goods or services, or increasing the level of service results in greater discounts. The cited portion of column 3 indicates that goods, services or the combination of goods and services of Ruckart include telephones, wireless communication devices, local telephone services, wireless communication devices, local telephone services, long distance telephone services, wireless telephone services, paging services and internet services. Ruckart **does not disclose** providing discounted billing rates. It is respectfully submitted that any discount offered by Ruckart is for the basic service plan package and is not applied as a rate to airtime consumed in excess of calling plan limits.

Even if lines 51-56 discuss providing a greater discount if more expensive products are selected, that does not disclose or suggest the subject matter recited in **claim 46**, which includes that the continuously increasing discounted billing rate is a function of the calling plan subscription cost of the subscriber that generates a larger discount for higher cost subscription plans **and** larger amounts of airtime consumed in a first airtime category.

For at least the foregoing additional reasons, **claim 46** is not anticipated and is not obvious in light of Bugiu, CCP and Ruckart.

Additionally, there is **no motivation** in the art for combining Bugiu, CCP and Ruckart. The motivation suggested by the Office Action is based on **impermissible hindsight reasoning**. Furthermore, **claim 46** does not recite a discounted billing rate based on the price of a product selected in order to provide a variable pricing structure that rewards customers for choosing a greater number of goods and services. **Claim 46** is not concerned with a greater number of goods and services.

For at least the foregoing additional reasons, **claim 46** is not anticipated and is not obvious in light of Bugiu, CCP and Ruckart.

**Claim 47** was rejected under 35 USC §103(a) as being unpatentable over Bugiu in view of CCP, Dahm and Ruckart.

**Claim 47** recites the system of **claim 41** wherein the continuously increasing discounted billing rate is a function of the time period the subscriber has been a customer and the calling plan subscription cost of the subscriber that generates a larger discount for longer customer time periods, higher cost subscription plans and larger amounts of airtime consumed in a first airtime category.

Rather than address the subject matter directly, the Office Action asserts that Bugiu discloses determining discount billing rate as a function of loyalty and reward customer for spending money on services. Additionally, the Office Action **stipulates** that Bugiu does not disclose determining a time period the subscriber has been a customer and determining the first discounted billing rate based on a function of the time period the subscriber has been a consumer. In this regard, it is noted that **claim 47** does not recite these determinations.

The Office Action also **stipulates** that Bugiu does not disclose determining a discounted billing rate based on a calling plan subscription cost or determining a time period the subscriber **has been** a customer. In this regard, the Office Action asserts that Dahm discloses offering better rates in exchange for longer term commitments

to customers that are likely to churn. Again, it is noted that **claim 47** does not recite offering better rates in exchange for long term commitments.

The Office Action goes on to assert that because --Bigiu discloses and does not disclose the elements recited in **claim 47** and because Dahm discloses making offers to customers likely to churn and that customer churning increases with each passing month--, therefor, Bigiu in view of CCP and Dahm discloses --determining a discounted billing rate based on time period the subscriber has been a customer and generates larger discounts for longer customer time periods and higher cost subscription plans-- but fails to disclose --determining a discounted billing rate based on calling plan subscription costs--. In this regard, the Office Action relies on Ruckart and cites the Abstract and column 3, lines 33-36, to support the assertion that Ruckart discloses "a method and apparatus for providing discounted billing rates customers for wireless telephone service". As indicated above, this assertion as well as it can be understood, is respectfully traversed. Even if Ruckart could be construed as disclosing providing a discount for a calling plan, it is respectfully submitted that Ruckart only discloses providing that discount if the calling plan is bundled with other items. Moreover, a discount for a calling plan is not a discounted billing **rate**. Still further, the discount for bundling of Ruckart **is not** a discounted rate applied to airtime minutes consumed above a calling plan limit for a first category of airtime.

For at least the foregoing reasons, Bigiu, CCP, Dahm and Ruckart do not include the subject matter for which they are relied, and **claim 47** is not anticipated and is not obvious in light of even four documents including Bigiu, CCP, Dahm and Ruckart.

The Office Action also asserts that Ruckart discloses providing a greater discount if more expensive products are selected. However, it is respectfully submitted that disclosure of providing a greater discount if more expensive products are bundled together in a single purchase **does not disclose or suggest a** continuously increasing discounted billing rate that is a function of the time period the subscriber has been a customer and the calling plan subscription cost of the subscriber that generates a larger discount for longer customer time periods, higher cost subscription plans and larger amounts of airtime consumed in a first airtime category, as recited in **claim 47**.

Additionally, it is respectfully submitted that there was **no motivation** in the art at the time the invention was made to combine disclosure from the **four** cited documents including two related to churn reduction, one providing a pricelist for answering service operator time and the fourth related to bundling of products and services.

In this regard, it is noted that the Office Action asserts that a motivation for combining these four documents is “to provide a variable pricing structure that rewards customers for choosing a greater number of goods and services.”

However, this is a goal allegedly achieved by Ruckart alone and does not motivate a combination with Bigiu, Dahm and CCP. Accordingly, the only motivation for combining these four documents is **impermissible hindsight reasoning** based on information gleaned only from the present application.

For at least the foregoing additional reasons, **claim 47** is not anticipated and is not obvious in light of Bigiu, CCP, Dahm and Ruckart.

#### **Telephone Interview**

In the interests of advancing this application to issue the Examiner is invited to telephone the undersigned to discuss the foregoing or any suggestions that the Examiner may have to place the case in condition for allowance.



### CONCLUSION

**Claims 1-47** remain in the application. **Claim 42** has been amended to correct typographical errors. These amendments do not require a new search. For at least the foregoing reasons, the application is condition for allowance. Accordingly, an early indication thereof is respectfully requested.

Respectfully submitted,

Fay Sharpe LLP

February 3, 2009  
Date

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#### CERTIFICATE OF MAILING OR TRANSMISSION

Under 37 C.F.R. § 1.8, I certify that this Amendment is being

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